

Debbie Beadle

EXHIBIT NO. 169.

From: Evan Maxim
Sent: Friday, July 13, 2012 2:30 PM
To: Debbie Beadle
Subject: FW: We need to review Ecology's adverse comments from 2005 ECA update
Attachments: Ecology Comments on 2005 ECA update.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Public comment

*Evan Maxim
Senior Planner
City of Sammamish
425.295.0523*

From: Mahbubul Islam [<mailto:Islam.Mahbubul@epamail.epa.gov>]
Sent: Friday, July 13, 2012 2:29 PM
To: Evan Maxim
Cc: Debbie Beadle; Mike Collins; Jeff Wasserman; Kathy Richardson; Kathy Curry; Kamuron Gurol; Michael Luxenberg; Joe Lipinsky; Ryan Kohlmann; Susan Cezar
Subject: We need to review Ecology's adverse comments from 2005 ECA update

Hi Evan,

I think we should do a due diligence check to ensure that we have taken the opportunity to review and appropriately rectify Ecology's adverse comments on the City's 2005 ECA update. I have compared the current 2005 adopted ECA codes against Ecology's comments in the attached letter under the paragraph, *We would like to offer the following detailed comments to help strengthen certain sections of Sammamish's Critical Areas Regulations*, and found that for the most part the City had not remedied the deficiencies noted by Ecology. Also, if that comment letter is not already posted on the website, please do so for public's use.

Thanks,
Mahbubul

(See attached file: Ecology Comments on 2005 ECA update.pdf)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

November 28, 2005

Kathy Curry, Senior Environmental Planner
City of Sammamish
Community Development Department
486 – 228th Avenue, NE
Sammamish, WA 98074

Dear Ms. Curry:

RE: City of Sammamish's Critical Areas Regulations Update – Wetland Protection

Thank you for the opportunity to review the draft updates of Sammamish's Critical Areas Regulations (CAR) and the Supplemental Code Changes, both dated September 15, 2005, as they pertain to wetland protection. We also reviewed the City's Wetland Comparison Table showing how the City's existing and proposed regulations compare with nearby local jurisdictions. We appreciated talking with you about our concerns.

Ecology particularly supports the following sections of the City's CAR update:

- 21A.15.1415 We appreciate the City's proposal to adopt Ecology's recently revised Washington State Wetland Rating System for Western Washington (2004) that is based on the best available science.
- 21A.50.060(1)(e) clarifies that restoration and enhancement are exempt from review processes in the CAR, subject to approval of a plan by the City, except that a notice on title may still be required.
- 21A.50.145 We applaud the clear set of requirements for mitigation plans to be submitted to the City for review.
- 21A.50.170 allows the City to require fencing around a critical area where necessary to protect the functions of that critical area.

We would like to offer the following detailed comments to help strengthen certain sections of Sammamish's Critical Areas Regulations:

- 21A.50.070(1)(d)(ii) Stormwater management facilities constructed within a forested buffer of a wetland can significantly reduce the function of that buffer including the protection it affords



the wetland. In addition to the restrictions already provided, Ecology recommends restricting the placement of stormwater facilities in wetland buffers to the outer 25% of non-forested buffers around Category III or IV wetlands.

- 21A.50.145(7) Ecology recommends a minimum of 10 years of monitoring where woody vegetation is part of the mitigation plan.
- 21A.50.290 (1) Ecology appreciates that the City is proposing wetland buffers that account for the functions or special characteristics of the wetlands in determining needed buffer widths. Ecology's recommended buffer approach was established in conjunction with local government staff and consultants to assist urban and urbanizing jurisdictions, and is based on an extensive review of the scientific literature, found in *Wetlands in Washington State, Volume 1: A Synthesis of the Science*, and *Volume 2: Guidance for Protecting and Managing Wetlands*, at http://www.ecy.wa.gov/programs/sea/bas_wetlands/index.html). King and Pierce Counties, and cities including Redmond, Marysville and Stanwood have adopted a similar buffer approach, and we believe it is well-suited for urbanizing settings such as the City of Sammamish.

Sammamish is a growing city that is designated to support urban population densities and urban uses, where most of the existing and proposed land uses would be considered to be high intensity (see Appendix 8-C, Volume 2, *Wetlands in Washington State*, Table 8C-3). The buffer widths proposed in the City's CAR update are comparable to those recommended by Ecology for moderate intensity land uses (Appendix 8-C). The recommended "moderate intensity" wetland buffers can provide adequate protection for high intensity land uses when additional measures are implemented to minimize impacts to wetlands from the adjacent development, such as are listed in Table 8C-8, Appendix 8-C. The City of Sammamish already requires many of these additional measures, including light and noise restrictions, and stormwater runoff controls to avoid impacts to wetlands and other critical areas through the adopted stormwater manual.

In addition, the City is proposing to retain "wetland management overlay areas" that provide additional protection to Category I wetlands. 21A.50.290(6) would require increases in wetland buffer widths for Category II wetlands when they are within 300 feet of a Category I or II wetland, a salmonid stream, or a fish and wildlife habitat conservation area. The City also proposes to adopt new regulations protecting ground water quality and recharge. Therefore, it is appropriate for the City to implement wetland buffer width requirements similar to the "moderate intensity land use" buffers recommended by Ecology. However, Ecology recommends that the City include provisions to increase the buffers on Category III wetlands with moderate habitat scores, as the proposed buffer of 75 feet will not adequately protect the habitat function of these wetlands.

- 21A.50.290(1)(b) would continue to apply previously established wetland buffers even where new development is proposed, as long as the previous buffer width is at least 50% of the buffer width required in the updated CAR. The buffer widths previously required by the City or the

County in many cases do not provide adequate protection for the functions of wetlands, based on Ecology's review of the scientific literature. This provision is understandable for re-development of existing structures. However, where there are undeveloped lots in previously approved developments in the City of Sammamish, this provision could allow degradation of wetland resources. The City should clarify the CAO language to ensure that this provision only applies to re-development of existing structures.

- 21A.50.290(5)(c) and 21A.50.290(7) We recommend that buffers be reduced to no less than 75% of the standard buffer width at any location, in order to protect the functions of both the buffer and the wetland.
- 21A.50.290(7)(f) This language would allow buffer width reduction in return for restoration of an off-site buffer area. Please note that Ecology's wetland buffer width recommendations assume an intact, functioning buffer. Buffers only provide functions for the wetland that they surround. Please clarify this section to ensure that off-site buffer restoration can only compensate for the loss of buffer functions when the restored buffer is on the same wetland as the impacted buffer.
- 21A.50.310(6)(a) The mitigation ratios proposed in the draft regulations may not be adequate to prevent the loss of wetland function. Recent studies conducted in the Pacific Northwest and elsewhere in the United States found that mitigation projects continue to fail to adequately compensate for permitted impacts. Based on these findings, Ecology has published guidance in Table 8C-11 of *Wetlands in Washington State—Volume 2: Guidance for Protecting and Managing Wetlands*. We encourage you to consider adopting these recommended ratios. These recommendations take into account both the type of wetland and the type of mitigation being proposed. King County and Redmond recently adopted similar ratios, and this approach is consistent with what the state and federal agencies require for mitigation. By adopting the recommended ratios, the City will help streamline the approval process for applicants.

If the City wants to adopt simplified ratios, we recommend the following:

Category I: 6:1
Category II: 3:1
Category III: 2:1
Category IV: 1.5:1

Ecology would like to review any scientific data that Sammamish can provide to support lower mitigation ratios, for example, by demonstrating that wetland mitigation projects in the City are more successful than those constructed elsewhere in the state.

If the City of Sammamish proposes to adopt a revised CAO that departs from recommendations based on the best available science, the City should provide a written rationale including analysis of its implications and potential risks as part of the findings of the adopting ordinance. The

Kathy Curry
RE: City of Sammamish Critical Areas Regulations Update
November 28, 2005
Page 4

written record supporting the City's decision should include a detailed explanation of the risk to wetland functions that is likely to follow implementation of the revised CAO. The rationale should include an evaluation of alternative methods that the City will employ to ensure no net loss of wetland structure, function, and value.

The City's Wetland Comparison Table references regulations from the Cities of Woodinville and Issaquah, neither of which has been updated to consider the best available science. Ecology is working with both of these local jurisdictions to strengthen their wetland protection regulations. The other two local jurisdictions in the Comparison Table, Redmond and King County, have both updated their critical areas regulations to reflect the scientific literature.

We appreciate the opportunity to work with the City on revising the Critical Areas Regulations regarding wetlands. If you have any questions or would like to discuss Ecology's comments, please give me a call at (425) 649-7149 or send email to cala461@ecy.wa.gov.

Sincerely,



Laura Casey
Wetland Specialist
Shorelands and Environmental Assistance Program

LC:cu

cc: Pam Erstad, Washington Department of Fish & Wildlife
Anne Fritzel, Department of Community, Trade, and Economic Development
Donna Bunten, Ecology CAR Review Coordinator
Geoff Tallent, Interim Section Manager, Ecology Shorelands & Environmental Assistance Program
Erik Stockdale, Interim 401/Wetlands Supervisor